

REFERENCE TITLE: mortgage brokers; agency relationship; duties

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

## **HB 2140**

Introduced by  
Representatives Ableser: Campbell CH

### **AN ACT**

**AMENDING TITLE 6, CHAPTER 9, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 6-911; RELATING TO MORTGAGE BROKERS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2       Section 1. Title 6, chapter 9, article 1, Arizona Revised Statutes, is  
3 amended by adding section 6-911, to read:

4           6-911. Duties of agency

5           A. A MORTGAGE BROKER HAS AN AGENCY RELATIONSHIP WITH A BORROWER WHEN  
6 THE MORTGAGE BROKER ACTS IN THE CAPACITY OF A MORTGAGE BROKER. A MORTGAGE  
7 BROKER WITH AN AGENCY RELATIONSHIP WITH A BORROWER SHALL DO ALL OF THE  
8 FOLLOWING:

9           1. ACT IN THE BORROWER'S BEST INTEREST AND IN THE UTMOST GOOD FAITH  
10 TOWARD THE BORROWER AND SHALL NOT COMPROMISE THE BORROWER'S RIGHT OR INTEREST  
11 IN FAVOR OF ANOTHER PERSON'S RIGHT OR INTEREST, INCLUDING THE MORTGAGE  
12 BROKER'S RIGHT OR INTEREST.

13           2. CARRY OUT ALL LAWFUL INSTRUCTIONS OF THE BORROWER.

14           3. DISCLOSE TO A BORROWER ALL MATERIAL FACTS OF WHICH THE MORTGAGE  
15 BROKER HAS KNOWLEDGE THAT MIGHT REASONABLY AFFECT THE BORROWER'S RIGHTS,  
16 INTEREST OR ABILITY TO RECEIVE THE BORROWER'S INTENDED BENEFIT FROM THE  
17 RESIDENTIAL MORTGAGE LOAN, BUT NOT FACTS THAT ARE REASONABLY SUSCEPTIBLE TO  
18 THE KNOWLEDGE OF THE BORROWER.

19           4. USE REASONABLE CARE IN PERFORMING DUTIES.

20           5. ACCOUNT TO A BORROWER FOR ALL OF THE BORROWER'S MONIES AND PROPERTY  
21 THE MORTGAGE BROKER RECEIVES AS THE AGENT.

22           B. A MORTGAGE BROKER WITH AN AGENCY RELATIONSHIP WITH THE BORROWER  
23 SHALL NOT ACCEPT, GIVE OR CHARGE ANY UNDISCLOSED COMPENSATION OR REALIZE ANY  
24 UNDISCLOSED REMUNERATION, EITHER THROUGH DIRECT OR INDIRECT MEANS, THAT  
25 INURES TO THE BENEFIT OF THE MORTGAGE BROKER ON AN EXPENDITURE MADE FOR THE  
26 BORROWER.

27           C. THIS SECTION DOES NOT PROHIBIT A MORTGAGE BROKER FROM CONTRACTING  
28 FOR OR COLLECTING A FEE FOR SERVICES RENDERED THAT HAS BEEN DISCLOSED TO THE  
29 BORROWER IN ADVANCE OF THE PROVISION OF THE SERVICES.

30           D. THIS SECTION DOES NOT REQUIRE A MORTGAGE BROKER TO OBTAIN A LOAN  
31 CONTAINING TERMS OR CONDITIONS NOT AVAILABLE TO THE MORTGAGE BROKER IN THE  
32 MORTGAGE BROKER'S USUAL COURSE OF BUSINESS OR TO OBTAIN A LOAN FOR THE  
33 BORROWER FROM A MORTGAGE LENDER WITH WHOM THE MORTGAGE BROKER DOES NOT HAVE A  
34 BUSINESS RELATIONSHIP.